

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1051
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to create and enact two new sections to chapter 65-02 and a new section to chapter 65-04, of the North Dakota Century Code, relating to attorney's fees and reimbursement to employers, payment of fees associated with credit or debit card payments, and settlements regarding amounts owed by employers; to amend and reenact sections 65-04-19, 65-04-24, and 65-04-25 and subsection 1 of section 65-04-26.1 of the North Dakota Century Code, relating to audit of employers, workforce safety and insurance retaining counsel on employer files, and filing payroll reports; to provide a continuing appropriation; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Attorney's fees reimbursement.

An employer that is insured and in good standing with the organization is eligible for reimbursement of reasonable legal costs and reasonable attorney's fees if the employer is found to be uninsured or noncompliant by the workers' compensation authorities of another state and hires an attorney to defend against the determination. A reimbursement may be made only if the organization determines the employer's employees did not regularly work in the other state.

SECTION 2. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Electronic transaction payment fees - Continuing appropriation.

Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of fees associated with credit or debit card payments made to the organization.

SECTION 3. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Organization to assign rate classifications, calculate premium, and determine premium due from employer - Audit - Notification of billing statement as notice of amount due.

1. The organization shall assign rate classifications based on information provided to the organization by the employer or information gathered through the organization's investigative process.
2. The organization shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the organization received information an employer is subject to the title.
3. If the organization does not receive the payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information, the organization may calculate premium using the wage cap in effect per employee reported in the previous payroll report, using information obtained through the organization's investigative process, or using data obtained from job service North Dakota.

4. The organization may audit an employer conducting business in this state. Audit findings are applicable to the audited period and the subsequent payroll period only, unless the audit referral is made for a potential violation of section 65-04-33.
5. The organization shall send a copy of the billing statement to the employer. Sending the billing statement, by mail or electronically, constitutes notice to the employer of the amount due.

SECTION 4. AMENDMENT. Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

65-04-24. Notice of premium or assessment owing - Organization to bring suit for premiums in default.

The organization shall notify an employer of the amount of premium, assessment, penalty, and interest due the organization from the employer. If the employer fails to pay that amount within thirty days, the organization may collect the premium, assessment, penalties, and interest due by civil action. In any action for the collection of amounts due the organization under this title, the court may not review or consider the action of the organization regarding the acceptance or payment of any claim. The organization may adjust or compromise the account. The organization may retain counsel on a contingent or hourly fee basis to represent the organization in any proceeding relating to the collection of amounts due under this title. The organization shall charge attorney's fees and costs to the organization's general fund.

SECTION 5. AMENDMENT. Section 65-04-25 of the North Dakota Century Code is amended and reenacted as follows:

65-04-25. Service of nonresident employer in suit for premium or in suit against an uninsured employer.

If the employer in an action to collect delinquent premiums or for injuries sustained in the employer's employment for which the employer did not carry the required insurance is a nonresident of this state, or a foreign corporation or limited liability company doing business in this state, service of the summons may be made upon any agent, representative, or foreman of ~~said~~the employer in this state, or in the case of a foreign corporation, its director, and if there is no agent, representative, or foreman, or in the case of a foreign corporation, director, upon whom service can be made in this state, service upon the secretary of state constitutes personal service upon that nonresident employer or corporation's director who has either failed to secure the necessary coverage or who is delinquent in the employer's premiums, or service may be made in any other manner designated by law. The organization may retain counsel who is licensed in another state to represent the organization on a contingent or hourly fee basis in any proceeding relating to the collection of amounts due the organization under this title. All attorney's fees and costs incurred under this section are a charge to the general fund.

SECTION 6. AMENDMENT. Subsection 1 of section 65-04-26.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An officer or director of a corporation, or manager or governor of a limited liability company, or partner of a limited liability partnership, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing ~~premium~~payroll reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums under this chapter and reimbursement under section 65-04-04.4, including interest, penalties, and costs if the corporation or limited liability company does not pay to the organization those amounts for which the corporation or limited liability company is liable.

SECTION 7. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Settlement in discretion of organization.

Notwithstanding the other provisions of this chapter, the organization may settle an amount owed by an employer to resolve a disputed issue at any time and on its own motion or by application of an employer.

SECTION 8. APPLICATION. Section 1 of this Act applies to attorney's fees incurred after July 31, 2021.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1051 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 92 Nays 0 Absent 2

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,
at _____ o'clock _____ M.

Secretary of State